

**THE
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Via Electronic Mail

March 18, 2020

Anthony J. Annucci
Acting Commissioner
New York State Department of Corrections and Community Supervision
1220 Washington Avenue, Building Two
Albany, New York 12226-2050

John Morley, MD
Chief Medical Officer
New York State Department of Corrections and Community Supervision
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Re: **COVID-19 in New York State Prisons**

Dear Acting Commissioner Annucci and Chief Medical Officer Morley:

We write to continue our dialogue about the Department's efforts to address the rapid spread of COVID-19. We thank you for reaching out to us this weekend, prior to the Department's temporary suspension of in-person visitation, and very much appreciate your commitment to keeping our line of communication open. We appreciate the challenges you are facing, particularly in light of Governor's Cuomo's direction to State agencies to reduce their "non-essential" workforce by at least 50%, which we have been told by staff at some DOCCS prisons applies to at least some of your staff. We also know that a uniform staff person at Sing Sing has already been found to have COVID-19.

As we all are painfully aware, this is the most severe health crisis any of us have experienced. We understand the efforts you are making and believe the points we raise below must be considered for those people who remain in custody. But it is clear now, as recognized by nationally known experts, including those who have been in charge of prison and jail health care operations in this State, that even with the best of efforts, it will be impossible for people in custody to be fully protected from the transmission of this virus. These experts include Dr. Robert Greifinger—a former Deputy

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Commissioner/Chief Medical Officer of the Department—and Dr. Homer Venters, who ran the Rikers Island jail medical care system until March 2017. It is equally clear that a significant number of incarcerated people, particularly those in vulnerable populations, are at risk of death absent public health intervention.¹ We know this from our New York experience with tuberculosis, an airborne infection potentially fatal to compromised patients, with transmission patterns similar to the transmission patterns of COVID-19, the virus that caused the current pandemic.

With this grim background, we request that the Department take the following steps:

I. Advocate that Governor Cuomo Grant Clemency to Vulnerable Incarcerated Individuals.

Most urgently, we call on you to urge Governor Cuomo to use his executive powers to grant clemency and order the release of as many vulnerable persons from custody as possible. The term "vulnerable persons" includes older adults and individuals with chronic medical conditions and/or an immunocompromised state that may put them at higher risk for poor outcomes (*e.g.*, diabetes, heart disease, receiving immunosuppressive medications, chronic lung disease, chronic kidney disease).²

As you know, several departments of correction have already released incarcerated people in an effort to forestall the spread of the virus.³ For the first time in its history, the New York City Board of Correction, the oversight agency for the New York City jails, has recommended such action, calling for the release of [1] people who are over 50, and [2] people who have underlying health conditions, including lung disease, heart disease, diabetes, cancer, or a weakened immune system.

II. In the Absence of a Decree from the Governor, Use the Temporary Release Provisions to Release Vulnerable Persons.

DOCCS also has the power to temporarily release people in its custody who satisfy one of these criteria. The goal of the leave of absence program, for example, is to release persons in DOCCS for a limited period of time when they cannot obtain the services they require while in custody.⁴ DOCCS

¹ Robert B. Greifinger, *Commentary on TB Testing of Inmates*, 111(4) Public Health Reports 328, July/August 1996; Farah M. Parvez, Mark N. Lobato, Robert B. Greifinger, *Tuberculosis Control: Lessons for Outbreak Preparedness in Correctional Facilities*, 16(3) Journal of Correctional Health Care 239, May 12, 2010; Robert B. Greifinger, Nancy J. Heywood, Jordan B. Glaser, *Tuberculosis In Prison: Balancing Justice and Public Health*, 21(3-4), The Journal of Law, Medicine and Ethics 332, 1993; Sarah E. Valway, Sonia B. Richards, Joan Kovacovich, Robert B Greifinger, Jack T. Crawford, Samuel W. Dooley, *Outbreak of Multi-Drug-resistant Tuberculosis in a New York State Prison, 1991*, 140(2) American Journal of Epidemiology 113, July 15, 1994.

² Centers for Disease Control, *Corona Virus Disease 2019 (COVID-19)*, available at <https://www.cdc.gov/coronavirus/2019-nCoV/hcp/clinical-criteria.html> (last visited March 18, 2020).

³ Nelson Oliviera, *Dozens of Inmates Released from Ohio Jail over Coronavirus Concerns*, NEW YORK DAILY NEWS, Mar. 16, 2020, at <https://bit.ly/2ISkmYK>.

⁴ See Temporary Release Annual Report, Department of Corrections and Community Supervision, at 5 ("Eligibility for Temporary Release Programs: Leave of Absence - allows inmates to leave a facility to receive medical . . . treatment when the treatment is absolutely necessary and not available within the DOCCS correctional system.").

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also operates the system of parole release in this State, and thus determines who is held in county custody on parole violations.

III. Release Persons Currently Detained in Jails or Prisons for Parole Violations.

In addition to releasing vulnerable people, we urge you to order the release of all persons in New York City and County custody held on parole violations. The Board of Correction has also called for such action.

IV. Reducing the Spread of the Virus.

We also ask the Department to consider several suggestions for limiting the spread of the virus. Our concerns fall broadly into three areas: [1] increasing communication options for incarcerated people; [2] limiting congregate gatherings; and [3] ensuring the provision of medical and mental health services.

1) Increasing Communication Options for Incarcerated People and their Families.

Provide Incarcerated Individuals with Free Postage.

It is crucial that during this public health emergency, incarcerated individuals retain the ability to communicate with their loved ones. We suggest that as an initial step, the Department drastically expand its stamp allowance. So long as visitation remains suspended, all postage should be free.

Negotiate with J Pay to Provide Free Email Service.

We suggest that the Department work with J-Pay to provide free email service during the pendency of the no-visit protocol. If J-Pay will not agree to this, then we urge the Department to use emergency funds to allow increased contact.

Provide Free Telephone Calls While Visitation is Suspended.

To protect staff members and other incarcerated people, this access should be unmediated where possible and should include wheel-in phone carts and anti-viral wipes. To effectuate the Americans with Disabilities Act, the Department should provide unlimited access to TTY for incarcerated people who are deaf and hard of hearing. Finally, we understand that the Department has increased its telemedicine and VTC options in some facilities. To the extent the Department can utilize this preexisting technology to expand video visitation during this crisis, it should.

None of these provisions can replace in-person visiting. But given the anxiety faced by all of us, including those in custody, who need their family and friends now more than ever, all efforts should be made to expand access safely. Once we pass through this crisis, in-person visiting must of course be resumed.

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Increase Access to Phone Calls Between Lawyers and Their Clients.

We appreciate that legal visits have not been suspended, but at the same time, we are all operating under direction to limit non-essential travel and contact. Therefore, to the extent feasible, we urge increased access to legal calls.

We ask that the staff members responsible for arranging and implementing legal phone calls be considered "essential staff" and that legal phone calls, rather than visits, become the norm for meeting with clients for the duration of the state of emergency.

2) Limiting Congregate Gatherings.

The Centers for Disease Control ("CDC") and World Health Organization ("WHO") recommend limiting congregate gatherings. In fact, CDC guidance released on March 16 recommends limiting gatherings to no more than 10 individuals. As currently organized, DOCCS facilities cannot implement this recommendation. We strongly encourage the Department to reconfigure its facilities' populations, housing, and programming and otherwise alter its facility-level operations, to the extent possible, to drastically limit public gatherings and congestion.

We suggest that the Department drastically expand its feed-in permit option to, at the very least, accommodate people who are particularly susceptible to the pathogen. To the extent the Department continues congregate dining, we recommend that the Department stagger meal times to keep such congregate activity to an absolute minimum while expanding personal space for incarcerated individuals and staff.

The Department should also ensure its procedures for dish and utensil use, distribution, and cleaning, comply with the latest recommendations.

Conduct Intake Procedures in Other Than Congregate Settings.

During our last call, Acting Commissioner Annucci stated that the Department suspended the intake process during recent public health emergencies. We are interested in learning more about that suspension and whether the Department is considering a similar initiative to combat the transmission of COVID-19, including transfer practices and draft practices. We are similarly concerned about certain ceiling arrangements, particularly double ceiling and dormitory housing. To the extent feasible, the Department should utilize single ceiling as much as possible. This means the Department should pay careful attention to the housing arrangements in annexes, medium-security facilities, Upstate Correctional Facility, Southport Correctional Facility, and the SHU-200s.

3) Ensuring the Provision of Medical and Mental Health Services.

First and foremost, the Department must ensure that incarcerated people have ready and regular access to soap, clean towels, cleaning supplies, and hot water at all times. This includes people who are housed in limited access areas such as the Juvenile Separation Unit, and observation settings such as the Residential Crisis Treatment Program.

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We strongly recommend the Department set up portable hand sanitizer stations, overseen by staff, in areas where handwashing is not feasible, such as mess halls, recreation areas, and programming spaces.

If more restricted movement becomes necessary, the Department should work with the Office of Mental Health to expand mental health treatment options, including increased cell-side clinical rounds.

Finally, we request an update from the Department about a few initiatives mentioned during our March 6, 2020 telephone call.

- What is the Department doing to screen all staff entering state prisons?
- What is the current Residential Medical Unit capacity? What is the isolation room capacity? In our call on March 6th, you told us the number of RMU and respiratory isolation rooms available within the Department. However, we were not clear if the number of RMU beds you provided overlapped with the number of respiratory isolation rooms.
- How many RMU and isolation rooms are currently unoccupied?
- What is the current accessible hospital bed capacity?
- How many ventilators does the Department have?
- How is the Department defining essential and non-essential staff?
- How is the Department informing incarcerated people and their family members of its efforts to combat this outbreak?

We appreciate our continued open line of communication, and we look forward to speaking with you about these concerns.

Sincerely,

/s/

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